

Remarks

Case Background

On September 30, 2005, Applicants filed a Notice of Appeal for the above-reference case. On July 25, 2006, the Examiner reopened prosecution and a non-final Office action was mailed. On October 24, 2006, Applicants filed an Appeal Brief and a request to reinstate the appeal, and on December 11, 2007, a Notice of Hearing Confirmation from the Board of Patent Appeals and Interferences (hereinafter "Board") was issued indicating a hearing date was scheduled for January 15, 2008.

On January 14, 2008, prior to the scheduled hearing date, Applicants filed a Request to Withdraw the Appeal, a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114, and a reply (with claim amendments) to the last outstanding, non-final Office action under 37 C.F.R. § 1.111. Applicants believed the RCE submission and response were proper, as they were filed after appeal to the Board, but prior to a decision on the appeal.

However, some time later, on April 22, 2008 the Board rendered a decision in the appeal based on the claims that were pending prior to the RCE filed on January 14, 2008. In their decision, the Board reversed all of the rejections on appeal and entered a new ground of rejection under 37 C.F.R. § 41.50(b). Thus, on June 20, 2008, in order to avoid abandonment of the case pending before the Board and in response to the Board's decision and the issuance of a new ground of rejection, Applicants filed a Request to Reopen Prosecution Under 37 C.F.R. § 41.50(b) along with a reply (with claim amendments) under 37 C.F.R. § 1.111.

Then, on September 23, 2008 the Board dismissed the appeal and provided a notice that Appeal 2007- 3369 was no longer pending in view of the fact that Applicant's RCE *was* timely filed. For this reason, the Board vacated their decision and returned prosecution to the Examiner.

On September 5, 2008 (prior to the Board's dismissal of the appeal), the Examiner issued a Notice of Non-Compliance. Thus, Applicants reply (and claim amendments) filed herewith are in response to the Examiner's currently outstanding Office Communication dated September 5, 2008.

Claim Status

Upon entry of the foregoing amendments, claims 8-13, 56, and 70-75 are pending in the application, with claim 8 being the independent claim. Claims 1-7, 14-55, and 57-69 have been cancelled. Claim 8 is currently amended. Support for the amendments to claim 8 can be found throughout the Specification. See, for example, at page 2, last paragraph of the specification as originally filed. Thus, no new matter is added by way of these amendments, and their entry is respectfully requested.

The currently amended claims submitted herewith are based on those reviewed by the Board, wherein the rejection of claims 8-12, 56 and 70-73 under 35 USC § 102(b), over Major in view of Deana and Belasco and the rejection of claims 8-12, 56, and 70-73 under 35 USC § 103(a), over Major in view of Maudru were both reversed (currently vacated for the reason stated above). Even though the appeal was dismissed, the currently amended claims also take into consideration the Board's proposed new ground of rejection of claim 8 under 35 USC § 102(b) over Maudru. Thus,

Applicants believe that the current claims are in condition for allowance and respectfully request that the Examiner reconsider and withdraw the outstanding rejections.

Conclusion

Applicants believe that a full and complete reply has been made to the Notice of Non-Compliance dated September 5, 2008. Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

If the Examiner feels for any reason that additional discussion is necessary, Applicants invite the Examiner to call the undersigned directly at the number listed below.

Respectfully submitted,

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/Bernadette M. Perfect/

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